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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 755

THELMA M. ALMY MURRAY,

Petitioner,

vs.

UNITED STATES OF AMERICA AND CITIZENS COMMERCIAL & SAVINGS BANK, A MICHIGAN CORPORATION, ADMINISTRATOR FOR GEORGE ALMY, JR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the order of the Circuit Court of Appeals for the Sixth Circuit entered April 4, 1951, affirming the judgment of the District Court for the Eastern District of Michigan, Northern Division, filed May 23, 1951.

Opinion Below

No opinion was written by the Circuit Court of Appeals.

Basis of Jurisdiction

Jurisdiction is invoked under Title 28:1254 of United States Code Annotated.

The order of the Circuit Court of Appeals was filed April 4, 1951, and this petition is filed within ninety days therefrom asking for a writ of certiorari for review thereof.

Questions Presented

There are three fundamental questions presented in determining whether the benefits from a $10,000 veteran's insurance policy should be paid to the insured's estate or to his former wife. The first question to be answered is whether a wife who has been divorced can receive the insurance benefits if she is named beneficiary in the policy, but this question has been conceded in favor of the appellant. The second question arises because of the Michigan Statute which provides that if no mention is made of an insurance policy in a divorce decree that the wife is no longer beneficiary and it shall be paid to the husband's estate, and the question presented in this appeal is whether this state statute can control a Federal Insurance policy contract. The third question is whether the guardian of an incompetent veteran can change the beneficiary on his insurance policy, issued under the Federal Statutes.

Summary Statement

The essential facts are contained in the stipulated facts (R. 21).

The plaintiff Thelma M. Almy Murray, was the wife of George Almy Jr., when he was issued National Service Life Insurance Policy No. N-12 147 020 for the sum of $10,000.00 on the 24th day of June, 1943. She was named the beneficiary by the insured when the policy was issued to him. In

October of 1944 the insured was adjudged mentally incompetent in the Probate Court for Genesee County, a guardian was appointed for him, and he remained mentally incompetent in a mental hospital continuously from that time until his death. The insured himself never made any change in the named beneficiary.

July 9, 1945, plaintiff was divorced from the insured by the Circuit Court for Genesee County and there was the usual formal provision regarding dower (R. 22). At a subsequent hearing in the divorce proceedings the court amended the decree to provide that the plaintiff turn over to the defendant certain personal property, but no mention was made of the insurance policy in question although another policy of the insured's was specifically mentioned. The plaintiff has since remarried, prior to the death of the insured.

The guardian attempted to change the beneficiary named in the policy to make it payable to the estate on order of the Probate Court for Genesee County, November 20, 1946 (R. 14). The Veteran's Administration recognized this act. The plaintiff never was notified or made a party to these proceedings in Probate Court.

The insured died March 11, 1949, while the original policy was in full force and effect. Claim was filed with the Veteran's Administration by both the plaintiff herein and the estate, interpleaded defendant. The Veteran's Administration was ready to pay the estate and suit was filed by the plaintiff for the benefits under the policy, the government answered admitting the policy and willingness to pay to whomever the court determined. The estate asked to be interpleaded as defendant and the order was granted on consent of all parties. The estate also filed a cross bill to obtain the benefits of the policy and the District Court rendered judgment in favor of the estate, (R. 27) and the plaintiff appealed.

The Circuit Court of Appeals sustained the opinion of the lower court without opinion, and the plaintiff seeks appeal to this court.

Reasons for Granting the Petition

When the lower court decided the case against this appellant he decided that the Michigan Statute which provided that the beneficiary shall be changed by the divorce decree will govern Federal Veteran's Insurance. This is a new question that has never been decided by the Supreme Court for interpretation of the Federal insurance, and it is contrary to the decision of the Supreme Court in similar matters, it is an interpretation of a Federal Statute regarding the insurance on a point that has never been decided by this court, and it is an important question that may arise in many other Veteran's Insurance and should be settled by this court.

The Michigan Statutes Annotated, 25.131 provides:

> "Hereafter every decree of divorce shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment or annuity upon the life of the husband in which she was named or designated as beneficiary, or to which she became entitled by assignment or change of beneficiary during the marriage or in anticipation thereof, whether such contract or policy has heretofore or shall hereafter be written or become effective, and unless otherwise ordered in said decree such policy or contract shall thereupon become and be payable to the estate of the husband or to such named beneficiary as he shall affirmatively designate: . . . ."

The plaintiff in this matter got her divorce while this statute was in effect and although there was no specific provision in the decree regarding this insurance the lower court found that the former wife could not receive the benefits

from it. This allows local state statutes to change the rights under the Federal Insurance Statutes and federal contract for insurance. If this decision is allowed to stand it will set a precedent for allowing local statutes to change the effect of federal statutes and this is contrary to the other decisions of this court on similar questions. It has always been held that the federal statutes were supreme and could not be changed in their operation in various states by local laws. There has never been a decision concerning this particular statute and it should be decided whether it is going to affect federal insurance policies in Michigan.

The decision of the lower court also held that a guardian may change the beneficiary of the federal insurance policy, at least, when he has obtained an order authorizing the act from the supervising Probate Court. This question has never been decided by the Supreme Court, and it is a very important question that should be settled. There are many incompetent veterans under guardianship who have benefits under the Federal Insurance, and it is important to know whether these guardians can change the beneficiaries at will. If so, many beneficiaries can be named to suit the convenience of the guardian according to the facts he sees proper to present to the Probate Court.

Thus, the decision below has decided an important question of Federal law which has not been, but should be, settled by this Court.

Wherefore it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Sixth Circuit should be granted.

WALTER C. JONES & MAURINE L. JONES,
Attorneys for Petitioner,
501 Dryden Bldg., Flint, Michigan.

Dated May 21, 1951,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

THELMA M. ALMY MURRAY,

Petitioner,

vs.

UNITED STATES OF AMERICA .

and

CITIZENS COMMERCIAL & SAVINGS BANK, A MICHIGAN CORPORATION, ADMINISTRATOR FOR GEORGE ALMY, JR.

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

The primary question of whether the wife could receive the benefits of the Veteran's Insurance under the Federal Statutes after she was divorced was decided for the appellant. However, the government argued that she should not receive it under the facts of this cause because of the effect of the decree of divorce under the Michigan Statutes and because the guardian for the incompetent beneficiary had attempted to change the named beneficiary.

If the Michigan Statute (Michigan Statutes Annotated, 25.131) can change the effect of the Federal Insurance Statute (38 U. S. C. A. 802 (g)), we would have the state law surmounting the federal law. This court has been unwavering in following the rule that the federal law is supreme in

all matters that it undertakes to govern. The latest pertinent case is the case of *Wisner* v. *Wisner,* 70 Sup. Ct. Rep. 398. In that case this court held that the community property statute of California could not change the operation of the Federal Insurance for Veterans. If the present decision is allowed to stand it will be contrary to the decisions of this court.

The decision of the lower court is a determination of a new question. This particular statute has never been passed on to decide its effect on the Federal Insurance. If this determination is allowed to stand it will make precedent for the local state law to change the operation of the Federal Insurance act. It would be possible for any state to pass a law and provide for change of beneficiary and thus the Federal Insurance would be administered in different ways in each state. It is a question that should be finally determined by this court as it would have far reaching effect.

The decision of the lower court is even more drastic in its determination that the guardian may change the beneficiary of an insurance policy. There have been very few state decisions on this question and none in the Federal Supreme Court. Every state decision has been that the guardian could not change the beneficiary, except one which seems to decide that the guardian may but it is not directly in point.

2 Couch Cyclopedia of Insurance Law, Sec. 326, page 927;

25 Am. Jur. at page 67;

Kay v. *Erickson,* 244 N. W. 625, 84 A. L. R. 361;

Oregon Mutual Life Insurance Company v. *Jenkins,* 111 Pa. 2d 1026.

The case cited by the government for the estate was In re Degnan, 194 A. 789. But in that case the dispute was

between the estate and the beneficiary whether the change should be made.

The basic understanding of the naming of a beneficiary of an insurance policy is similar to the making of a will. It is an expression of the thoughts of the insured. When he is not able to think, no person can state what his thoughts would have been. It is apparent that in the case at bar the court felt certain that he knew what the insured would think and decided to allow the insurance to be paid in that way. However, it is a very distinct departure to allow the guardian to change the beneficiary without at least a procedure set up by statute whereby all parties' viewpoint would be presented to the Court. If this decision stands a person could have his relative committed as mentally incompetent, present to the Probate Court only such facts as he wished, get an order to change the beneficiary and receive the insurance himself.

The law has been long accepted as stated in 25 Am. Jur. at page 67:

> "The right of the incompetent to change the beneficiary of a policy upon his own life is personal, and cannot be exercised by a guardian or committee."

The lower court has decided this new question and if it is not reviewed the long standing concept of law will have been changed. If the beneficiary is to be changed by the guardian in the case of Federal Veteran's Insurance, it should only be done under legislation which provides for the proper checks and balances to prevent possible grevious inequities.

Thus in this petition for certiorari there are two inportant questions of law that were decided by the lower court which have never been passed upon by this court, but which were contrary to the decisions on similar questions. If this decision stands it will affect widely the administration of the

Federal Veteran's Insurance and the decision should be reviewed.

Therefore the petition for writ of certiorari should be granted.

Respectfully submitted,

WALTER C. JONES & MAURINE L. JONES,
Attorneys for Plaintiff and Appellant,
501 Dryden Bldg., Flint, Michigan.

Dated May 21, 1951.

(5090)

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 69

THELMA M. ALMY MURRAY, PETITIONER

v.

UNITED STATES OF AMERICA AND CITIZENS COMMERCIAL & SAVINGS BANK, A MICHIGAN CORPORATION, ADMINISTRATOR FOR GEORGE ALMY, JR.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case involves a dispute between petitioner, Thelma M. Almy Murray, divorced wife of George Almy, Jr., deceased, and respondent, Citizens Commercial & Savings Bank, Administrator of the Estate of George Almy, Jr., as to the disposition of the proceeds payable by the Government under a $10,000 life insurance policy issued to the deceased under the National Service Life Insurance Act.

In the policy which was issued on June 24, 1943, petitioner was named the beneficiary thereof. On October 24, 1944, the deceased was adjudged incompetent and respondent was named guardian and remained such guardian of his person and estate until his death on March 11, 1949. Respondent Citizens Commercial & Savings Bank thereafter became and still is the duly appointed and qualified administrator of the Estate of George Almy, Jr., deceased. On July 9, 1945, petitioner procured a decree of divorce from the deceased. Thereafter respondent, as directed by the Michigan Probate Court, filed an application to change the beneficiary of the National Service Life Insurance Certificate from Thelma M. Almy to the Estate of George M. Almy. The Veterans Administration approved the change of beneficiary on February 13, 1947. Following the death of the veteran, plaintiff made claim for the proceeds of the policy and her claim was disallowed. The claim of respondent for the proceeds of the policy was allowed and a check for $10,000 in payment thereof was issued but, before the check was cashed, payment was stopped because of the institution of the instant action.

Following the disallowance of her claim by the Veterans Administration, petitioner brought suit against the United States in the United States District Court for the Eastern District of Michigan, contending that she was the beneficiary designated

by the deceased on the policy and that any attempt thereafter to change the beneficiary of the policy was ineffective. The United States answered, admitting generally liability to whomever was established to be the proper beneficiary. Respondent, Citizens Commercial and Savings Bank was permitted to intervene and assert its claim to the proceeds of the policy. The District Court held that the beneficiary was effectively changed and the Court of Appeals for the Sixth Circuit affirmed.

Because the Government has no interest in this controversy other than to pay the proceeds of the insurance admittedly due to the proper beneficiary, the Government, in effect, occupies the role of a stakeholder and therefore takes no position as to whether the writ of certiorari should issue.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

JULY 1951.

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